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March 18, 1992

2-083A005

17755
MAR 23 1992 - 10 03 AM

INTERSTATE COMMERCE COMMISSION

Office of the Secretary
Interstate Commerce Commission
Twelfth Constitution Ave., N.W.
Room 2303
Washington, D.C. 20423

RE: Lease of Locomotive Equipment
National Railway Equipment Company, Lessor
South Orient Railroad Company, Lessee

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Dear Mr. Secretary:

I have enclosed an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease and maintenance agreement of locomotive equipment and is a primary document dated February 10, 1992. The names and addresses of the parties to the documents are as follows:

Lessor

National Railway Equipment Company
An Illinois Corporation
14400 S. Robey Street
P.O. Box 2270
Dixmoor, IL 60426

Lessee

South Orient Railroad Company, Ltd.
c/o Rail Operators, Inc.
P.O. Box 232
San Angelo, Texas 76902

A description of the equipment covered by the document follows:

MAR 23 0 55 AM '92
MOTOR OPERATING UNIT

Office of the Secretary
March 18, 1992
Page 2

<u>Type</u>	<u>Previous Road #</u>	<u>Present Road #</u>
GP9	5903	200
GP9	5904	201
GP9	5922	202
GP9	5941	203
GP9	5942	204

A fee of \$16.00 is enclosed. Please return the original and any extra copies not needed by the commission for recordation to Richard F. Loritz, 9533 W. 143rd Street, Orland Park, IL 60462.

A short summary of the document to appear in the index follows:

A lease agreement of locomotive equipment identified as five (5) locomotives, all type GP9, with road numbers of 200, 201, 202, 203 and 204, with National Railway Equipment Co., as Lessor, and South Orient Railroad Company, Ltd., as Lessee.

Also attached is an Affidavit executed by the attorney in fact for National Railway Equipment Co. and appropriately notarized declaring that the enclosed is the original document.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.
an Illinois Corporation

BY: _____
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/sjg

Enclosures
nrec/318.920

Interstate Commerce Commission
Washington, D.C. 20423

3/24/92

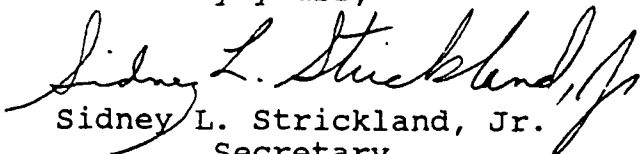
OFFICE OF THE SECRETARY

Loritz F. Richard
Orland State Bank Building
9533 West 143rd Street
Orland Park, Illinois 60462

Dear Sir;

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/23/92 at 10:05am , and assigned recordation number(s). 17755

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

RECORDATION NO. 17755
MAR 23 1992 10:05 PM
INTERSTATE COMMERCE COMMISSION

A. LEASE OF LOCOMOTIVE EQUIPMENT

1. Base Terms. National Railway Equipment Co. (National) agrees to supply on a lease basis five (5) locomotives as described in Exhibit A. South Orient R. R. LTD. (Orient) agrees to pay National Railway eighty seven dollars (\$87.00) per day per locomotive as lease rental along with eighty dollars (\$80.00) as maintenance charges per day per locomotive for the term of two (2) years.

2. Lease Renewal. National shall offer Orient the option to renew both the locomotive lease agreement and the maintenance agreement for an additional two, two (2) year terms. The locomotive and maintenance daily rates shall be renegotiated at time of renewal.

3. Default. Upon default by Orient in the payment of any amount due under the terms of this rental agreement, whether as rental or otherwise, or upon the violation by Orient of any of the terms and conditions hereof or if Orient shall vacate, desert or abandon the locomotive or permit same to remain vacated, deserted or abandoned for a period of twenty (20) days and the failure to remedy such default within thirty (30) days after notice of such default to Orient, then National at its option by written notice to Orient may declare this rental agreement to be terminated and all rights of Orient in and to said locomotives to be at an end, and National shall become entitled to the immediate possession of the locomotives. The declaration of default and

the repossession of the locomotives by National shall not excuse Orient from the liability to National for any rental earned prior to the termination of said rental agreement, or for any other expenses incurred by Orient prior to the termination of said rental agreement. Orient shall further be liable for and shall pay all expenses incurred by National in taking said locomotives into its possession upon such or any default under the terms of this rental agreement.

4. Uses. The locomotives are to be used by Orient for commercial railway hauling and/or passenger purposes; and Orient and National shall comply with all rules of the Association of American Railroads, the Interstate Commerce Commission and the Federal Railroad Administration, or any successors thereto, with respect to the use, maintenance and operations of the locomotives while in the possession of Orient.

5. Fees And Taxes. Orient shall be liable for and pay and satisfy every lawful claim and liability arising against the use or operation of said locomotives during the term of this rental agreement and, as additional rental, assumes hereunder all license fees, taxes, charges and penalties imposed by the state of operation or any other state, governmental, or municipal subdivision in which said locomotives may be situated, or may be operated, during the term of this rental agreement. Orient may in good faith contest the lawfulness of the imposition

of all such license fees, taxes, charges, and penalties and National shall cooperate with Orient in such contest.

6. Ownership. National covenants and warrants its ownership of said locomotives and guarantees peaceful possession of the locomotives to Orient at all times during the term of this agreement.

7. Indemnity. Orient shall indemnify National against any loss, liability, damage or expense which it may incur by reason of any claim made by third parties growing out of the operation of said locomotives, except for the loss, liability damage or expense caused or resulting from the negligence or willful misconduct of National or its employees.

8. Insurance. (a) Orient will provide and maintain for the said locomotives while under lease, insurance to cover both National and Orient against claims of third person(s) as follows:

- i. Public liability and property damage coverage protecting National and Orient with respect to their liability for injuries and/or death to third person and damage, destruction or loss of use of property of third persons, as provided in the insurance policy or policies.
- ii. Said liability coverage shall provide for an aggregate limit of not less than Five Million dollars (\$5,000,000.00), to the extent as commercially available, for all damages arising

out of the bodily injuries to or death of persons and for all damages to or destruction of property within one year, and with maximum self insured retention of One Hundred Thousand and NO/100 dollars (\$100,000.00) to the extent commercially available.

- iii. In the event Orient fails to procure or maintain the above insurance, National may procure or maintain the insurance. The resultant cost shall be payable to National as part of the next rental payment, and Orient's failure to pay this cost shall have the same effect as the failure to pay rent.
- iv. Orient shall provide National with a certificate of such insurance from the insurer which shall provide that insurer will notify National in writing at least thirty (30) days prior to cancellation or refusal to renew any policy.

(b) National shall provide and maintain insurance to cover both National and South Orient R. R. LTD./Rail Operators against claims of third persons as follows:

- i. Claims arising under Workers' or Workmen' Compensation Acts with respect to employees of National performing maintenance service as outlined in this agreement.

- ii. Public liability and property damage coverage protecting National and Orient with respect to their liability for injuries and/or death to third persons and damages, destruction or loss of use of property of third persons as a result of the ownership or use of motor vehicles in connection with National performing maintenance services as outlined in the agreement.
- iii. Said liability coverage shall provide for a limit of not less than \$500,000.00 for all damages arising out of each occurrence.
- iv. National shall provide Orient with a certificate of such insurance from the insurer which shall provide that insurer will notify Orient in writing at least thirty (30) days prior to cancellation or refusal to renew any policy.
- v. National shall indemnify Orient against any loss, liability or damage expense which it may incur by reason of any claim made by third parties growing out of the operation of said motor vehicle used in connection with National performing maintenance services as outlined in this agreement.

9. Physical Damage. Orient further agrees to provide and maintain physical damage insurance coverage, in the amount stated

in Exhibit A, for loss of or damage to said locomotives due to fire, theft, windstorm, flood or other risks and hazards covered by the standard type of policy regularly issued therefore. National shall be named insured in the above physical damage policy.

10. Non-Assignment. Orient agrees that it will not assign, transfer, sublet or lease its rights under this lease, without prior written consent of National which consent shall not be unreasonably withheld, and will not pledge, mortgage or otherwise encumber or permit to exist upon or be subjected to any lien or charge, any right or interest of Orient hereunder. Orient agrees to keep appropriate signs and/or plaques on the locomotives to clearly show that the locomotives are not the property of Orient and are owned by others. Orient shall have the right to permit other railroad companies to use the locomotives pursuant to Power exchange agreements between Orient and such other railroad companies, provided however that National shall not be responsible for maintaining any locomotive while being so used by such other railroad company. National shall be satisfied that the maintenance performed by the using railroad is of a standard satisfactory to National. Any maintenance or repairs made shall be verified with written records.

11. Condition At Delivery. The locomotives subject to this lease shall be qualified prior to delivery and shall be in compliance with the Federal Railroad Administration requirements.

12. Warranty And Maintenance. National's warranty and maintenance obligation with respect to the locomotives shall be as set forth under Part C herein, (Warranty And Maintenance Obligations).

13. Damage To Locomotives. Orient shall pay for all damages caused by failure of Orient to maintain an adequate level of crankcase oil in the air compressor or diesel engine of the locomotives or other neglect of Orient or Orient employees or other persons using said locomotives while the locomotives are in Orient's possession, regardless of whether the damage is discovered while the locomotives are in the possession of Orient or upon inspection when the locomotives are returned to National. Except as otherwise provided in this Agreement, Orient further understands that National assumes no liability for injuries sustained by any person or employee of Orient as a result of the use of the locomotives. National assumes all liabilities for injuries to National's employees resulting from the performance of National's obligations hereunder. National does not assume any liability for failure to keep the locomotive in proper condition or repair except as provided in the Agreement.

14. Return Of Locomotives. If Orient does not exercise its option to renew the rental agreement in Section 2 of this part, Orient shall return said locomotives to National at the end of the lease term in a condition as good as that in which it was received, normal wear and tear excepted and further excepting any condition resulting from the failure of National to maintain said locomotives in accordance with this Agreement or a breach of the warranty in this Agreement.

Failure of Orient to return the locomotives to National at Silvis, Illinois at the expiration of the lease term shall be construed as an extension of the lease from month to month under the same terms and conditions hereof, at National's sole option.

B. GENERAL PROVISIONS

1. Payments. All payments or notices hereunder to be sent pursuant to this agreement shall be in writing and shall be addressed, if to National to NATIONAL RAILWAY EQUIPMENT CO., at P.O. Box 74493, Chicago, Illinois 60690, and if to Orient to its contract manager, Rail Operators, Inc. at P. O. Box 232, San Angelo, Texas 76902, or such other address as may be designated from time to time by either party in writing. All payments in arrearage shall bear fourteen percent (14%) per annum interest until date paid.

All payments are due in advance monthly installments, with the first month's rent and one month's security deposit

due at time of execution of this lease agreement. All payments are due on the first day of each month.

2. Whenever used in this Agreement, the term "Orient" shall be construed to include, where applicable, its manager, Rail Operators, Inc.

C. WARRANTY AND MAINTENANCE OBLIGATION

1. Warranty. National warrants all parts and components described in Exhibit A for a period of two (2) years while covered by this Agreement.

2. Maintenance. National Railway agrees to maintain the locomotives described in Exhibit A in satisfactory operating condition so as to meet all Federal Railroad Administration requirements. National shall provide one (1) qualified employee(s) with a vehicle to perform the maintenance. Orient shall also provide one (1) qualified employee, as required, at its sole cost. The National employee shall assist Orient in fueling, sanding, inspecting or other such locomotive duties when his work load allows. All repairs to locomotives shall be completed within five (5) calendar days except for major engine or generator repairs which shall be completed within fourteen (14) calendar days. If repairs are not completed within fourteen (14) calendar days, the maintenance payments shall decrease to forty (\$40.00) dollars per day for that particular

locomotive. If repairs are still not completed within thirty (30) calendar days, the maintenance payments shall not be owed for that particular locomotive until it is returned to service. National shall be responsible for all repairs such as engine failure, main generator failure, etc. for the term of the lease with the exception of routine servicing, consumable items and any physical damage caused to the locomotives out of negligent operation of the locomotives by Orient. Orient shall provide routine service for the locomotives and consumables such as fuel, lubricants, sand, filters, brake shoes, fuses, light bulbs, carbon brushes, etc. All units will be maintained at facilities provided by Orient at no cost to National. National shall require indoor storage for parts and supplies, office and office equipment and full use of the shop facility. National shall supply all tooling and shop equipment. Orient will provide water, electricity, air and access to telephone service.

3. Environmental Impact. National shall not be liable for any environmental impact problems that may arise under any present regulations or any future regulations that may be issued by any City, State or Federal authority.

4. Rate. Orient shall pay National to maintain the locomotives described in Exhibit A at the rate of eighty (\$80.00) dollars per day per locomotive for a minimum of five (5) locomotives. If the Orient fleet falls below five (5) locomotives

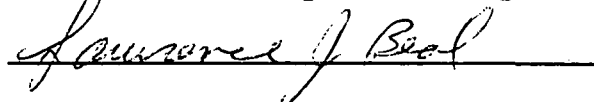
daily maintenance will increase accordingly. Any replacement or additional locomotive, not furnished by National, is subject to a thorough inspection by National Railway personnel as to its condition prior to being added to this agreement.

5. Use By Other Railroads. Orient may permit other railroad companies to use the locomotives described in Exhibit A provided, however, that National shall not be responsible for maintaining any locomotives while being used by any other railroad company. Maintenance payments by Orient shall continue during any such use.

6. Termination. This maintenance agreement may be terminated by Orient or National upon ninety (90) days notice in writing addressed to National Railway Equipment Co., at P.O. Box 74493, Chicago, IL 60690, or to Orient, in care of its contract manager Rail Operators, Inc. at P. O. Box 232, San Angelo, Texas 76902, or at such other addresses as may be designated from time to time in writing. Orient option to terminate this agreement shall only be the result of improper maintenance, performance or availability of the locomotives to the Lessee by the Lessor. National shall have the right to terminate this agreement as outlined in Section A. item number 3, or if the Orient fails to cooperate with National with regard to allowing National personnel time for inspections and maintenance of the locomotives or not providing a proper maintenance facility to perform these functions as outlined in Section C. item number 2.

IN WITNESS WHEREOF, the parties have signed this agreement.

NATIONAL RAILWAY EQUIPMENT CO.
an Illinois Corporation by:

A handwritten signature in cursive script, appearing to read "Lawrence J. Beal", is written over a horizontal line.

Lawrence J. Beal
President

SEAL

SOUTH ORIENT RAILROAD CO. LTD.

A handwritten signature in cursive script, appearing to read "Joel T. Williams, III", is written over a horizontal line.

Joel T Williams, III
President

SEAL

DATED: February 10, 1992

EXHIBIT "A"

<u>LOCOMOTIVE TYPE</u>	<u>PREVIOUS ROAD #</u>	<u>PRESENT ROAD #</u>	<u>CASUALTY VALUE</u>
GP9	5903	200	\$ 95,000.00
GP9	5904	201	95,000.00
GP9	5922	202	95,000.00
GP9	5941	203	95,000.00
GP9	5942	204	95,000.00

AFFIDAVIT

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

The undersigned states that he has read the attached document and that the document attached is identical to the complete and original Lease Agreement.

This Affidavit is made pursuant to the procedures in Section 117.3(2)(b) relative to the recordation of documents with the Interstate Commerce Commission.

Richard F. Lutz
AFFIANT

Subscribed and Sworn to
before me this 8th day
of April, 1992.

Sarah J. Goodnight
NOTARY PUBLIC

